An Ohio statute provides that when the death by wrongful act of an Ohio citizen in a foreign state creates a right of action there, that right may be enforced in Ohio. *Held*, that the Ohio statute, providing no remedy for the plaintiff, does not make an unconstitutional discrimination between the citizens of different states. *Chambers* v. *Baltimore & Ohio R. R.*, 207 U. S. 142.

At common law the Ohio courts did not entertain jurisdiction of actions for death by wrongful act arising under foreign laws. *Hover* v. *Pennsylvania Co.*, 25 Oh. St. 667. The present statute modifies the common law in allowing a remedy for a right so acquired in cases where the deceased was a citizen of Ohio. The citizenship of the person who acquires the right is immaterial. Access to the courts of Ohio will be denied the claimant under the foreign law whether he is a citizen of Ohio or a foreigner, if the deceased was a foreigner, and will be similarly granted if the deceased was an Ohio citizen. Consequently the decision of the court that this statute does not grant fundamental privileges to the citizens of one state which it denies to citizens of other states seems sound. The right of a state to open its courts to its own citizens, and to close them to citizens of other states has never been decided in the Supreme Court. It is interesting to note that the present case assumes, in accordance with previous dicta, that such a discrimination would be unconstitutional. But see 17 HARV. L. REV. 54.

CONSTRUCTIVE TRUSTS — MISCONDUCT BY NON-FIDUCIARIES — EFFECT OF CO-DEVISEE'S PROMISE TO TESTATOR UPON OTHER CO-DEVISEES. — By a drafted will R planned to leave his residuary estate to the defendants as tenants in common. Before signing, however, he desired to add a legacy to the plaintiff. Thereupon Y, one of the defendants, promised R that his wish should be executed, and R signed the will as drawn, the other defendants having no knowledge of Y's promise until after R's death. *Held*, that only the share of Y is bound by a trust for the plaintiff. *Powell* v. *Yearance*, 67 Atl. 892 (N. J., Ct. of Ch.).

Where a devise is secured by an oral promise to apply a part thereof for a third person, the law imposes upon the devisee a trust to fulfill his promise. See 20 HARV. L. REV. 403. Further, where the devise is in joint tenancy, a promise by one joint devisee, though unauthorized by his fellows, imposes a trust upon all. *Will of O'Hara*, 95 N. Y. 403. This is apparently due to the unity of interest among joint tenants. See 13 HARV. L. REV. 520. The English courts, though confessing the inconsistency, apply the doctrine to joint devisees only where the testator is induced to make a will, and not where he is induced to refrain from alteration. *In re Stead*, [1900] 1 Ch. 237. In the present case, there being neither agency nor joint tenancy, the promise of Y is not the promise of his co-devisees. Therefore, if a trust is imposed upon the other defendants, it must be in the absence of bad faith on their part. See 1 BIGELOW, FRAUD, 459. Since the whole doctrine is against the policy of the statute of frauds, it seems better to limit it to cases of clear bad faith. See *McCormick* v. *Grogan*, 4 Eng. & Ir. App. 82, 89. The cases of co-devises are usually so excepted. *Edson* v. *Bartow*, 154 N. Y. 199; *Tee* v. *Ferris*, 2 Kay & J. 357; *contra*, *Hooker* v. *Axford*, 33 Mich. 453.

COPYRIGHTS — INFRINGEMENT — RIGHTS OF ASSIGNEE OF COMMON LAW COPYRIGHT. — An artist sold to the plaintiff the exclusive right to reproduce one of his paintings. The plaintiff then took out a statutory copyright, and published photographic copies of the original, each bearing upon its face the notice of copyright. The original was never so marked. The defendant also published copies of the original, claiming that the plaintiff had failed to observe the copyright law. *Held*, that when an article is copyrighted the original is not a copy and so need not bear on its face notice of the copyright. *American Tobacco Co.* v. *Werckmeister*, 207 U. S. 375.

For a discussion of the principles involved, see 19 HARV. L. REV. 380.

DAMAGES — MEASURE OF DAMAGES — BREACH OF WARRANTY AS TO CHARACTER OF SEEDS. — The defendant sold to the plaintiff a quantity of

seeds warranted to be alfalfa. The resulting crop contained some alfalfa, but consisted mostly of weeds, and was not marketable. *Held*, that the plaintiff may recover the value of the crop which would have resulted if all the seeds had been alfalfa. *Depew* v. *Peck Hardware Co.*, 121 N. Y. App. Div. 28.

The allowance of such prospective profits is usually based on the ground that the parties at the time of the warranty foresaw the use to which the seeds would be put, and that the value of the contemplated crop can be computed with reasonable certainty. *Passinger* v. *Thoburn*, 34 N. Y. 634. In the case of bulbs this certainty, at least as to quantity, is obvious, and the rule of the present case applies. *Edgar* v. *Breck*, 172 Mass. 581. But if no crop results from the wrong seeds, the evidence of the probable produce of the right seeds in the land and the year in question is insufficient, and hence the only damages recoverable are the expenses of planting and the rental value of the land. *Shaw* v. *Smith*, 45 Kan. 334; *contra*, *Phelps* v. *Eyria Milling Co.*, 12 Oh. Dec. 692. If there results a crop of the kind contemplated, but of inferior quality, prospective profits are allowed. *White* v. *Miller*, 71 N. Y. 118. If, however, the resulting crop is of an entirely different kind, it would seem that the computation of the expected crop is too uncertain. *Cf. Bell* v. *Mills*, 68 N. Y. App. Div. 531. The principal case seems to fall on this side of the line, though the fact that some of the expected kind of grass came up may be urged to support the decision.

ELECTIONS — CONSTITUTIONALITY OF VOTING MACHINES. — A state statute authorized the use of a voting machine whereby the voter made no separate ballot to be counted later, but had to trust to the mechanical accuracy of mechanism which he could not see. *Held*, that the machine does not fulfil the requirement of the state constitution that elections shall be by written vote. *Nichols* v. *Minton*, 82 N. E. 50 (Mass.).

For a discussion of a contrary holding under a slightly different constitutional provision, see 20 HARV. L. REV. 329.

ELECTIONS — INDORSEMENT OF BALLOTS WITH RUBBER STAMP. — A statute required that ballots should be indorsed with the initials of a judge of election. The ballots in question bore initials imprinted by a rubber stamp. *Held*, that the ballots are void. *Berryman* v. *Megginson*, 82 N. E. 256 (Ill.).

As the statute declared that ballots should not be counted unless indorsed by the initials of a judge, it was mandatory, not directory, and strict compliance was necessary. *Slaymaker* v. *Phillips*, 5 Wyo. 453. A stamp has been held sufficient where a signature is required. *Streff* v. *Colteaux*, 64 Ill. App. 179; *Bennett* v. *Brumfit*, L. R. 3 C. P. 28. But to effect the purpose of this statute, the greatest possible prevention of fraud, handwriting should be required. *Choisser* v. *York*, 211 Ill. 56. It shows that the ballot was cast in accordance with the law if the judge was honest; it is strong evidence against him if he was dishonest, whereas a stamp is not so strong evidence, since the die can be borrowed, stolen, or duplicated. It is often argued that such a statute as this is unconstitutional because a voter may be disenfranchised through the fault of judges of election. *Moyer* v. *Van de Vanter*, 12 Wash. 377. But the weight of authority is that, since a voter is presumed to know the law, if he uses a ballot without the initials of the election judge, his disenfranchisement is justifiable. *Miller* v. *Schallern*, 8 N. D. 395.

EMBEZZLEMENT — APPROPRIATION BY AGENT OF FUNDS COLLECTED ON COMMISSION. — An insurance company employed the defendant, who was not a general commission agent, to collect premiums, allowing him to deduct a commission from the funds received. He converted the whole to his own use. *Held*, that he is guilty of embezzlement. *Commonwealth* v. *Jacobs*, 104 S. W. 345 (Ky.).

If the agent is not to have his commission until he hands over to his principal the sum received, he is guilty of embezzlement if he feloniously converts it. *Commonwealth* v. *Smith*, 129 Mass. 104. But where he is entitled to deduct his commission before such delivery, he has an interest in the fund, and